

Message Text

LIMITED OFFICIAL USE

PAGE 01 BONN 11319 01 OF 02 081130Z
ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 SP-02 USIA-06 AID-05 EB-07
NSC-05 EPG-02 TRSE-00 SS-15 STR-04 OMB-01 CEA-01
L-03 H-01 PA-01 PRS-01 CIAE-00 COME-00 FRB-03
INR-07 NSAE-00 XMB-02 OPIC-03 LAB-04 SIL-01 /100 W
-----101752 081211Z /53

R 081045Z JUL 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 9658
INFO AMCONSUL BREMEN
AMCONSUL DUSSELDORF
AMCONSUL FRANKFURT
AMCONSUL HAMBURG
AMCONSUL STUTTGART
AMCONSUL MUNICH
USMISSION USBERLIN
AMEMBASSY BERN
AMEMBASSY BRUSSELS
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY VIENNA
AMEMBASSY OSLO
AMEMBASSY STOCKHOLM
AMEMBASSY HELSINKI
AMEMBASSY THE HAGUE
AMEMBASSY DUBLIN
USMISSION GENEVA

LIMITED OFFICIAL USE SECTION 1 OF 2 BONN 11319

USEEC ALSO FOR EMBASSY, USOECD ALSO FOR EMBASSY

E.O. 11652: N/A
TAGS: ELAB, GW
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 11319 01 OF 02 081130Z

SUBJECT: EMPLOYERS CHALLENGE CONSTITUTIONALITY OF FRG
CODETERMINATION LAW

REF: A. BONN A-54; B. BONN 04679 (76)

SUMMARY: NINE MAJOR COMPANIES AND A NUMBER OF AFFILIATED MANAGEMENT ASSOCIATIONS, SUPPORTED AND FINANCED BY THE CONFEDERATION OF GERMAN EMPLOYERS ASSOCIATIONS (BDA), HAVE LODGED A CONSTITUTIONAL CHALLENGE TO THE CODETERMINATION LAW IN THE FRG'S FEDERAL CONSTITUTIONAL COURT. THESE MANAGEMENT ORGANIZATIONS COMPLAIN THAT THE LAW VIOLATES CONSTITUTIONALLY GUARANTEED PROPERTY RIGHTS AND UNDERMINES THE SYSTEM OF FREE COLLECTIVE BARGAINING. BDA'S ACTION HAS EVOKED STRONG RESPONSES FROM DGB AS WELL AS FROM LABOR MINISTER EHRENBERG AND OTHER FRG OFFICIALS. END SUMMARY.

1. THE CONFEDERATION OF GERMAN EMPLOYERS ASSOCIATIONS (BDA) HAS SPONSORED AND SUPPORTED A LEGAL CHALLENGE TO THE FRG'S 1976 CODETERMINATION LAW. SINCE THE BDA TECHNICALLY HAS NO STANDING TO BRING SUCH A SUIT -- IT HAS NO VESTED OWNERSHIP RIGHTS, NOR IS IT INVOLVED DIRECTLY IN INDUSTRY-WIDE COLLECTIVE BARGAINING -- THE CHALLENGE WAS MADE FORMALLY BY NINE WELL-KNOWN GERMAN FIRMS -- INCLUDING BAYER LEVERKUSEN, HOECHST (CHEMICALS), DAIMLER-BENZ (AUTOMOBILES), BOSCH, VARTA (ELECTRONICS) -- AND A NUMBER OF BDA-AFFILIATED EMPLOYER ASSOCIATIONS. BDA HAS SECURED THE SERVICES OF PROFESSOR MAASSE, FORMER STATE SECRETARY IN THE FEDERAL LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BONN 11319 01 OF 02 081130Z

MINISTRY OF JUSTICE, TO HANDLE ITS CASE.

2. THE BDA'S OBJECTIONS TO THE CODETERMINATION LAW ARE NOT NEW. BDA HAS COMPLAINED, SINCE THE BILL'S PASSAGE, THAT THE CODETERMINATION LAW AS WRITTEN VIOLATES THE OWNERSHIP RIGHTS GUARANTEED UNDER ARTICLE 14 OF THE BASIC LAW (CONSTITUTION). ITS REASONING IS THAT LABOR REPRESENTATION ON THE BOARD OF SUPERVISORS AND THE COMPLICATED DECISION-MAKING PROCESS REQUIRED BY THE LAW INTERFERE WITH THE OWNER'S RIGHTS TO DISPOSE OF THEIR OWN PROPERTY AS THEY SEE FIT. FURTHERMORE, THE DESIGNATION OF THE PERSONNEL MANAGER AS "INDUSTRIAL RELATIONS DIRECTOR" (ARBEITSDIREKTOR), AS REQUIRED BY THE COAL-STEEL CODETERMINATION LAW, VIOLATES THE PRINCIPLE OF FREE COLLECTIVE BARGAINING. MAKING THE "INDUSTRIAL RELATIONS DIRECTOR" A FULL-FLEDGED MEMBER OF A MANAGEMENT BOARD, IN BDA'S VIEW, BRINGS A UNION-NOMINATED OFFICER IN ON THE MANAGEMENT SIDE OF ANY COLLECTIVE BARGAINING PROCESS.

3. IN ITS COMPLAINT TO THE FEDERAL CONSTITUTIONAL COURT, THE BDA CLAIMS TO BE CHALLENGING THE IMPLEMEN-

TATION OF THE CODETERMINATION LAW AND NOT THE
PRINCIPLE OF LABOR-MANAGEMENT CODETERMINATION ITSELF.
BDA PRESIDENT SCHLEYER SAYS ONLY A CLARIFICATION OF
CONTROVERSIAL PROVISIONS IS BEING SOUGHT.

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 BONN 11319 02 OF 02 081159Z
ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 SP-02 USIA-06 AID-05 EB-07
NSC-05 EPG-02 TRSE-00 SS-15 STR-04 OMB-01 CEA-01
L-03 H-01 PA-01 PRS-01 CIAE-00 COME-00 FRB-03
INR-07 NSAE-00 XMB-02 OPIC-03 LAB-04 SIL-01 /100 W
-----102089 081210Z /53

R 081045Z JUL 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 9659
INFO AMCONSUL BREMEN
AMCONSUL DUSSELDORF
AMCONSUL FRANKFURT
AMCONSUL HAMBURG
AMCONSUL STUTTGART
AMCONSUL MUNICH
USMISSION USBERLIN
AMEMBASSY BERN
AMEMBASSY BRUSSELS
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY VIENNA
AMEMBASSY OSLO
AMEMBASSY STOCKHOLM
AMEMBASSY HELSINKI
AMEMBASSY THE HAGUE
AMEMBASSY DUBLIN
USMISSION GENEVA

LIMITED OFFICIAL USE SECTION 2 OF 2 BONN 11319

4. REACTION TO THE BDA'S MOVE HAS BEEN STRONGLY
NEGATIVE. FRG LABOR MINISTER EHRENBURG LABELLED THE
ACTION "EXTREMELY UNWISE" AND SAID IT WOULD "JEOPARDIZE
INDUSTRIAL PEACE IN OUR COUNTRY." DGB PRESIDENT VETTER
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 11319 02 OF 02 081159Z

WAS EVEN MORE BITTER. IN HIS VIEW, THE BDA ACTION SHOWS THAT THE EMPLOYERS "ARE NOT PREPARED FOR FAIR COOPERATION WITH THE TRADE UNIONS." THE TRADE UNIONS MUST FIGHT AND DEFEAT THIS ATTACK ON WORKERS' RIGHTS. VETTER ALSO SAID THAT THE DGB WOULD NOT PARTICIPATE IN THE NEXT "CONCERTED ACTION" MEETING, WHICH WAS SCHEDULED FOR JULY 5 (SEE SEPTTEL). IN HIS MESSAGE TO FRG ECONOMICS MINISTER FRIDERICH, WHO CHAIRS "CONCERTED ACTION" MEETINGS, VETTER EXPLAINED THAT THE APPROPRIATE CLIMATE FOR A MEETING WITH MANAGEMENT REPRESENTATIVES NO LONGER EXISTED AND THAT, THEREFORE, THE DGB WOULD NOT PARTICIPATE IN THE NEXT ROUND. VETTER ALSO ACCUSED FRIDERICH OF PAYING MORE ATTENTION TO THE INTERESTS OF MANAGEMENT THAN HE DID TO THOSE OF WORKERS. LABOR MINISTER EHRENBERG ALSO INFORMED FRIDERICH HE WOULD NOT ATTEND THE MEETING, SINCE THE ROUND WOULD BE "USELESS" WITHOUT LABOR REPRESENTATIVES.

5. COMMENT FROM SPD BUNDESTAG DEPUTIES WAS STRONGLY CRITICAL OF THE BDA'S ACTION. SPD SPOKESMAN FOR SOCIAL AFFAIRS, EUGEN GLOMBIG, DESCRIBED THE BDA'S COMPLAINT AS "PART OF THE OLD EMPLOYER STRATEGY" TO PREVENT THE EXTENSION OF LABOR RIGHTS. ON THE OTHER HAND, OTTO GRAF LAMBSDORFF, ECONOMICS SPOKESMAN FOR THE FDP IN THE BUNDESTAG, CLAIMED THE BDA'S DECISION CONFIRMED THAT THE FDP HAD BEEN RIGHT IN EMPHASIZING DURING THE PARLIAMENTARY DELIBERATIONS THAT THE CODETERMINATION BILL NEEDED CLARIFICATION OF CONSTITUTIONAL ISSUES RAISED BY THE BILL. HE HOPED THAT THE PROCEEDINGS OF THE CONSTITUTIONAL COURT WOULD PUT AN END, ONCE AND FOR ALL, TO CHARGES THAT THE CODETERMINATION LAW WAS UNCONSTITUTIONAL.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BONN 11319 02 OF 02 081159Z

6. COMMENT: BDA PRESIDENT SCHLEYER HAD INDICATED SOME TIME AGO THAT THE PROVISIONS OF THE LAW WOULD REQUIRE FURTHER TESTING IN COURT TO SEE WHETHER VARIOUS PROVISIONS OF THE CODETERMINATION LAW ARE COMPATIBLE WITH PRIVATE PROPERTY RIGHTS GUARANTEED BY THE FRG CONSTITUTION (SEE P. 96 AND 97 ANNUAL LABOR REPORT, REF A). HOWEVER, HE SAID THE BDA DOES NOT EXPECT THE COURT TO DECLARE THE LAW UNCONSTITUTIONAL IN ITS ENTIRETY. THE MAJOR IMPACT OF THE BDA'S CHALLENGE IS POLITICAL. ALTHOUGH THE FDP, AS JUNIOR PARTNER IN THE

SPD/FDP COALITION WHICH PASSED THE BILL, FORCED CHANGES PROVIDING MORE PROTECTION OF STOCKHOLDERS' PROPERTY RIGHTS, THE BDA ACTION HAS REVIVED OLD CONTROVERSIES OVER THE IMPLEMENTATION OF CODETERMINATION BETWEEN THE FDP ON ONE HAND AND THE SPD, WITH ITS UNION CLIENTELE, ON THE OTHER. VETTER'S (SPD) RENEWED ATTACKS ON FRIDERICH'S (FDP), TOGETHER WITH EHRENBERG'S (SPD) DEMONSTRATION OF SOLIDARITY WITH THE DGB FURTHER COMPOUND DIFFICULTIES WITHIN THE SPD/FDP COALITION.

7. IT IS UNCLEAR WHETHER THE FRG'S INDUSTRIAL PEACE IS IN JEOPARDY AS PREDICTED OR WHETHER INVESTMENT CLIMATE HAS BEEN OR WILL BE AFFECTED. HOWEVER, IT CAN BE EXPECTED THAT INDUSTRIAL RELATIONS WILL BECOME MORE DIFFICULT AT A TIME WHEN MANY PLANTS ARE INVOLVED IN THE ELECTIONS FOR NEW BOARDS OF SUPERVISORS AS CALLED FOR BY THE CODETERMINATION LAW. THESE ELECTIONS ARE GOVERNED BY THE NEW ELECTION RULES ISSUED ON JUNE 23 BY THE MINISTRY OF LABOR WHICH REAFFIRMED SPECIAL MINORITY RIGHTS FOR "MANAGERIAL EMPLOYEES" (LEITENDE ANGESTELLTE) WHICH HAD BEEN DEMANDED BY FDP AND OPPOSED BY THE UNIONS. STOESEL

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, LITIGATION, CONSTITUTION, LABOR UNIONS, LABOR FORCE
Control Number: n/a
Copy: SINGLE
Sent Date: 08-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977BONN11319
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770242-1317
Format: TEL
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770779/aaaacqz.tel
Line Count: 245
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 4be8146f-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 BONN A-54, 77 BONN 4679
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1926933
Secure: OPEN
Status: NATIVE
Subject: EMPLOYERS CHALLENGE CONSTITUTIONALITY OF FRG CODETERMINATION LAW
TAGS: ELAB, GE
To: STATE USEEC MULTIPLE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/4be8146f-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009